

appellate process, an effort in what can only appear to be an effort to avoid reaching finality in this case. The other six requests for extensions were while this case was at the Court of Appeals.

The first two were reasonable due to an unavoidable delay in getting trial transcripts prepared. The second two were not accompanied by similar external causes and eventually resulted in sanctions being imposed. Only after being sanctioned did petitioner's Brief of Appellant get filed. The next request for extension was to gain more time for petitioner for file a Statement of Additional Grounds and finally petitioner sought an extension of the deadline for filing his Petition for Review with this court.

This is yet another request for extending a deadline clearly established by the rules of appellate procedure -- now to allow for the filing of an Amended Petition for Review to raise an alleged new issue regarding a jury instruction that was never mentioned in either petitioner's briefs or Statement of Additional Grounds filed with the court of appeals.

ARGUMENT AGAINST GRANTING EXTENSION OF TIME

While RAP 1.2(a) clearly states the court's desire that rules of appellate procedure be interpreted liberally enough such that the outcome of a case are not determined on the basis of compliance or noncompliance with the rules, this same rule also sets limits to the liberal interpretation by making it subject to the restrictions of RAP 18.8(b) in the area of extensions of deadlines.

In contrast to the liberal application to the rules of appellate procedure as envisioned by RAP 1.2(a), the restrictions of RAP 18.8(b) expressly require a narrow application. Beckman ex. rel. Beckman v. State, Dept. of Social and Health Services, 102 Wn.App. 687, 693, 11 P.3d 313 (2000). RAP 18.8(b) requires that the appellate court only grant extensions in deadlines in "extraordinary circumstances and to prevent a gross miscarriage of justice."

Numerous appellate courts have interpreted this rule and reached a consensus that only those "defective filings were upheld due to 'extraordinary circumstances,' i.e., circumstances wherein the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party's control. In such a case, the lost opportunity to appeal would constitute a gross miscarriage of justice because of the appellant's reasonably diligent conduct." Reichelt v. Raymark Industries, Inc., 52 Wn.App 763, 765-66, 764 P.2d 653 (1988).

The burden is on petitioner to provide "sufficient excuse" for his failure to include this new claim in the initial timely filing of his petition for review as well as to demonstrate "sound reason" to abandon the court's preference for finality. State v. Moon, 130 Wn.App. 256, 260, 122 P.3d 192, (2005).

Unlike petitioner's past motions for extensions which were based upon attorney workload or taking time off due to holidays and vacation, or petitioner's lack of access or understanding to legal resources in prison,

the current request has no justification other than the claim by appellate counsel of being ineffective for not having discovered the alleged error in a jury instruction in time for inclusion in the initial briefing before the court of appeals, nor in the statement of additional grounds, nor the original petition for review.

Petitioner has had access to the materials now being complained of for more than a year and there has been no showing of excusable error nor circumstances beyond the party's control that prevented this issue from having been raised earlier.

CONCLUSION

Petitioner has made no showing that amending his petition for review is based upon extraordinary circumstances. Accordingly, and pursuant to RAP 18.8(b), petitioner's motion should be denied.

DATED this 1st day of November, 2013.



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SUPREME COURT FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Plaintiff/Respondent.)
)
 CHRISTOPHER M. FOLEY,)
)
 Defendant/Appellant.)
 _____)

No. 30219-9-III

AFFIDAVIT OF MAILING

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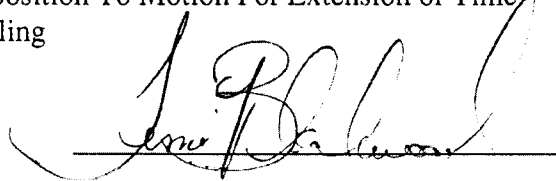
The undersigned being first duly sworn on oath, deposes and states:

That on the 1st day of November, 2013, affiant deposited into the mail of the United States a properly stamped and addressed envelope directed to

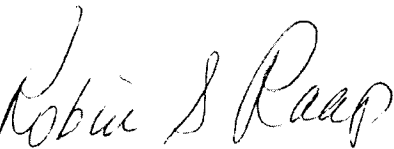
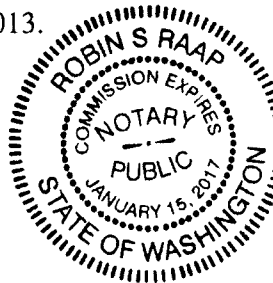
Christopher Foley# 352358
Airway Heights
Correction Ctr
P.O. Box 2049
Airway Heights, WA 99001

containing copies of the following documents:

- (1) Response in Opposition To Motion For Extension of Time
- (2) Affidavit of Mailing



SIGNED AND SWORN to (or affirmed) before me on this 1st
day of November, 2013.



NOTARY PUBLIC in and for the
State of Washington.

My Appointment Expires: 11/15/17